

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TOSHIBA CORPORATION, No C-05-4016 VRW  
Plaintiff, Related to Case Nos  
v C-05-4100 VRW, C-05-4547 VRW,  
C-04-4708 VRW, C-05-2914 VRW  
HYNIX SEMICONDUCTOR, INC, et al, ORDER  
Defendants.

On November 17, 2005, defendants Hynix Semiconductor, Inc and Hynix Semiconductor America, Inc (collectively "Hynix") moved to stay the present case. Doc #9. Hynix states that before plaintiff Toshiba Corporation ("Toshiba") initiated this case on October 4, 2005, Toshiba filed a complaint on or about September 29, 2005, with the United States International Trade Commission ("ITC"), under section 337 of the Tariff Act of 1930, as amended, 19 USC § 1337. Id at 1. Toshiba's complaint requests the ITC to investigate whether Hynix is infringing the same patents at issue in this action. Id.

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1           Based on 28 USC § 1659, Hynix asserts that the present  
2 case should be stayed until the ITC concludes its action. That  
3 provision provides:

4           In a civil action involving parties that are also  
5 parties to a proceeding before the United States  
6 International Trade Commission under section 337 of  
7 the Tariff Act of 1930, at the request of a party to  
8 the civil action that is also a respondent in the  
9 proceeding before the Commission, the district court  
shall stay, until the determination of the Commission  
becomes final, proceedings in the civil action with  
respect to any claim that involves the same issues  
involved in the proceeding before the Commission, but  
only if such request is made within --

10           (1) 30 days after the party is named as a respondent  
11 in the proceeding before the Commission, or  
12           (2) 30 days after the district court action is filed,  
whichever is later.

13 See also Universal Tool & Stamping Co v Ventra Group, 46 USPQ 2D  
14 1799, 1800 (ND Ind 1998) ("[I]t is clear that a stay must (the  
15 statute says 'shall') be entered since there is no dispute that the  
16 claims here and those before the United States International Trade  
17 Commission involve the same issues.").

18           Here, Hynix is a named respondent in an action before the  
19 ITC. Doc #10, Ex A at 10. And both the ITC proceeding and the  
20 present case involve infringement contentions concerning Toshiba's  
21 United States Patent Nos 5,150,178; 5,270,969 and 5,517,449. Id at  
22 12; Complaint (Doc #1). Moreover, Toshiba does not oppose Hynix's  
23 request for a stay (Doc #12), and appeared to concede at a January  
24 31, 2006, case management conference that 28 USC § 1659 mandates  
25 granting a stay here.

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1           It is unclear, however, whether Hynix's stay request is  
2 timely. Hynix's motion was filed on November 17, 2005, more than  
3 30 days after both the complaint in the present case and in the ITC  
4 action were filed. Nonetheless, Hynix contends that it received  
5 notice of the ITC action on November 4, 2005; if this is the  
6 operative date on which Hynix was "named" as a respondent, then  
7 Hynix's stay request was timely.

8           In any event, it does not matter whether 28 USC § 1659  
9 mandates a stay here because the court finds, under its inherent  
10 authority, that a stay is appropriate. Rohan ex rel Gates v  
11 Woodford, 334 F3d 803, 817 (9th Cir 2003). The power to stay  
12 proceedings is incidental to the power inherent in every court to  
13 control the disposition of cases with economy of time and effort  
14 for itself, for counsel and for litigants. Landis v N Am Co, 299  
15 US 248, 254 (1936). Allowing the present case to proceed in  
16 parallel to the earlier-filed ITC action creates the risk of  
17 inconsistent results between the court and the agency. And because  
18 the issues involved in both proceedings are substantially the same,  
19 allowing the present case to go forward would waste time and effort  
20 for both the court and the litigants. Moreover, the parties appear  
21 to agree that a stay is appropriate here. Doc ##9, 12.

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1           Accordingly, the court GRANTS Hynix's motion for a stay  
2 and STAYS the present case until the parallel proceedings before  
3 the ITC become final. The clerk is DIRECTED to terminate all  
4 pending motions. The parties are instructed to notify the court in  
5 writing by August 1, 2006, on the status of the ITC proceeding.

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7           IT IS SO ORDERED.

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10           VAUGHN R WALKER

11           United States District Chief Judge  
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